

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEBRASKA

CARROLL E. HEATHERLY, as	)	
Independent Administrator of	)	
the Estate of MARGARET M.	)	
HEATHERLY, deceased, and	)	
CARROLL E. HEATHERLY,	)	
	)	
Plaintiffs,	)	8:01CV332
	)	
v.	)	
	)	
MIDWEST SPECIALIZED	)	ORDER
TRANSPORTATION; and DAVID	)	
GILBERTSON,	)	
	)	
Defendants.	)	
_____	)	

This matter is before the Court on defendants' motion to dismiss for failure to join an indispensable party, or in the alternative, for leave to file a third party complaint pursuant to Rule 14 of the Federal Rules of Civil Procedure (Filing No. 160), and defendant's motion for leave to file a supplemental brief (Filing No. 168). Plaintiffs have responded to both motions (Filing No. 163 and Filing No. 169). Also before the Court is the reply brief of the defendant (Filing No. 165).

The Court has reviewed the motions and the respective positions of the parties as set forth in their briefs.

Accordingly,

IT IS ORDERED:

1) Defendant's motion for leave to file a supplemental brief is granted;

2) Defendants' motion to dismiss pursuant to Rule 12(b)(7) of the Federal Rules of Civil Procedure premised on plaintiffs' failure to join an indispensable party is denied. The other truck driver is not an indispensable party.

3) Defendants' motion for leave to file a third-party complaint against Steven Alexander will be granted. Said third-party complaint shall be filed on or before December 30, 2005, and defendants shall have thirty (30) days to effect service upon said third-party defendant.

DATED this 22nd day of December, 2005.

BY THE COURT:

/s/ Lyle E. Strom

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LYLE E. STROM, Senior Judge  
United States District Court